

Appl. No.: 09/710,442
Amdt. Dated January 7, 2004
Response to Office Action of October 20, 2004

REMARKS/ARGUMENTS

As a preliminary matter, Applicants submit herewith a Power of Attorney appointing the undersigned as the principal attorney. A statement under 37 CFR 3.73b is also attached. Entry of the Power of Attorney is respectfully requested.

Claims 1-88 are currently pending in the application. Claims 54-70 have been objected to as allegedly including a typographical error. Claims 1-5, 8-11, 15-17, 21-26 and 85 have been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Application Ser. No. 09/863,593 in the name of Pruthi et al. Claims 6, 7, 12-14, 18-20, 28-30, 33-41, 43-65, 67-77, 79, 83, 84, and 86-88 have been rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Pruthi in view of U.S. Patent No. 6,421,323 issued to Nelson et al. Claim 27 has been rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Pruthi in view of U.S. Patent No. 6,058,102 issued to Drysdale et al. Claim 66 has been rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Pruthi in view of Nelson and Drysdale. Claims 31, 32, and 78 have been rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Pruthi in view of Nelson and U.S. Patent No. 6,556,659 issued to Bowman-Amuah. Claims 42 and 80 have been rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Pruthi in view of Nelson and U.S. Patent No. 6,321,264 issued to Fletcher et al. Claims 81 and 82 have been rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Pruthi in view of Nelson and U.S. Patent No. 6,134,237 issued to Brailean et al.

Applicants respectfully traverse the rejections set forth above. Applicants have amended claim 1 as follows:

- I. A method comprising:
 - monitoring performance of a network application at a demarcation point in a network by generating, at the demarcation point, data indicative of a first network latency condition between a first TCP host on a first side and the demarcation point and a second network latency condition between a second TCP host on a second side and the demarcation point; and
 - determining, based on analysis of the data indicative of the first and second network latency conditions, a location of a performance problem associated with the network application identified as a result of monitoring performance, the location

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being with respect to the demarcation point.

Applicants have amended the remaining independent claims in a similar manner. For example, claim 31 has been amended to include "monitoring performance of the network application at the demarcation point in a network by generating, at the demarcation point, data indicative of a first network latency condition between a first TCP host on a first side and the demarcation point and a second network latency condition between a second TCP host on a second side and the demarcation point." Claim 33 has been amended to state "a network device generating data related to operation of a network application at a demarcation point in a network on behalf of a provider, wherein the data is indicative of a first delay between a first TCP host on a first side and the demarcation point and a second delay between a second TCP host on a second side and the demarcation point." Claim 39 has been amended to include "a measurement engine to take measurements at the demarcation point and record information indicative of delays occurring in the network, wherein the delays correspond to a first delay between a first TCP host on a first side and the demarcation point and a second delay between a second TCP host on a second side and the demarcation point, the measurement engine to generate a measurement value in response to the information regarding delays." Claim 71 has been amended in a similar manner to claim 39. In addition, some of the remaining dependent claims have also been amended to account for amendments to corresponding independent claims, while other claims (such as claims 54 to 70) have been amended in response to informalities either alleged by the Examiner or detected by Applicants.

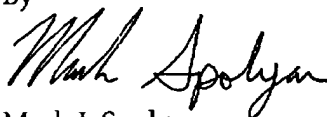
The Examiner primarily relies on Pruthi, both alone and in combination with Nelson to reject the pending claims. Pruthi and Nelson (either alone or in combination) do not disclose or suggest the subject matter of the claims, as amended. Pruthi does not disclose tracking network latency between a first TCP host and a demarcation point, and a second TCP host and the demarcation point. Rather, Pruthi discloses a network monitoring device that requires the use of explicit time stamps in the data packets, computing the difference in the time stamp and the packet arrival time, to measure one-way delay or network latency. This is not a feature of TCP hosts, which do not add time stamps to the data packets. The other network latency measure, disclosed by Pruthi et al., requires the use of multiple network monitors that are synchronized, and does not

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monitor network latency between the opposing hosts and a demarcation point. Furthermore, Pruthi does not disclose or suggest determining a location of a performance problem based on analysis of the first and second network latency conditions. Nelson does not disclose a system that monitors network latency.

In light of the foregoing, Applicant believes that all currently pending claims are presently in condition for allowance. Applicant respectfully requests a timely Notice of Allowance be issued in this case. If the Examiner believes that any further action by Applicant is necessary to place this application in condition for allowance, Applicants request a telephone conference with the undersigned at the telephone number set forth below.

Respectfully Submitted,
LAW OFFICE OF MARK J. SPOLYAR
By



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Date: January 7, 2004

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